IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1497 of 1995

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAIKUMAR CHUNILAL BHATT & 1 - Petitioner(s)

Versus

BHATT VASUDEVBHAI MOTIRAM - Respondent(s)

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Appearance :

MR RN SHAH for Petitioner No(s).: 1 - 1,2.

MR GIRISH D BHATT for Respondent No(s).: 1.

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 25/07/2005

ORAL JUDGMENT

RULE to issue upon respondents nos.1/1 to 1/5. Learned advocate Mr.Bhatt waives service of rule.

Learned advocate Mr.R.N.Shah appears for the petitioners and states that pending this Revision Application the petitioner no.2 has died leaving the

heirs who are petitioners nos.1/1 to 1/4. As the estate of the deceased petitioner no.2 is represented by the petitioners nos.1/1 to 1/4 the name of the petitioner no.2 is ordered to be deleted from the cause-title of the Revision Application.

The petitioners-heirs and legal representatives of the plaintiffs in H.R.P. Suit No.1399/1979 challenge the judgment and order dated 10th October, 1994 passed by the Appellate Bench, Small Causes Court, Ahmedabad in Civil Appeal No.13/1984.

The plaintiffs were the owners of a residential house bearing Municipal Census No.2288/1 situated at Astodia, Ahmedabad. Ground floor in the said house comprising a room and an osri was leased to the defendant for a monthly rent of Rs.50=00. The plaintiffs instituted H.R.P. Suit No.1399/1979 in the Court of Small Causes, Ahmedabad for recovery of possession of the suit premises on the ground, inter alia, that the plaintiffs required the suit premises reasonably and bonafide for their personal use. The suit was contested by the defendant vide written statement Exh.10. The learned trial Judge, by judgment and order dated 19th December, 1983, dismissed

the suit and passed decree in favour of the defendant. Feeling aggrieved, the plaintiffs preferred Civil Appeal No.13/1984 before the Appellate Bench, Small Causes Court. Pending the said Appeal the plaintiff no.1 passed away. His heirs and legal representatives were substituted. The lower appellate Court, by impugned judgment, held that the plaintiffs did require the suit premises reasonably and bonafide for their personal use. The lower appellate Court also held that in case the decree for eviction were passed a greater hardship shall be caused to the defendant. Decree for possession was, therefore, refused. Therefore, the present Revision Application.

Mr.Shah has submitted that the plaintiffs' was a large family comprising themselves, two sons and their family. The plaintiffs were in possession of two rooms on the first floor and one room on the second floor in the same building. The premises in their possession was not adequate to accommodate the entire family of the plaintiffs. With the growing children the requirement would be greater after a lapse of time. He has, therefore, submitted that the Court has failed to appreciate the hardship that is suffered by the

plaintiffs.

I am unable to agree with Mr.Shah. Indeed with a large family the plaintiffs did require more space but the defendant was also a family of six persons with four young children and the premises in their possession is not more than a room and an osri. In the circumstances, if the lower appellate Court has held that a greater hardship should be caused to the defendant no exception can be made about the said finding.

No other contention is raised before me. The Revision Application is dismissed. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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